IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.2237 of 2004
Date of Decision: 21.09.2006

Sat Pal ...Appellant

Vs.

Bachan Singh ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.R.C.Setia, Senior Advocate,
with Mr.Amit Jhanji, Advocate,
for the appellant.

Mr.Rakesh Garg, Advocate,
for the respondent.

Vinod K.Sharma, J. (Oral)

This order shall dispose of RSA No.2237 of 2004 and RSA No.2238 of 2004 titled Sat Pal Vs. Bachan Singh.

The plaintiff-respondent in RSA No.2237 of 2004 had filed a suit for possession of house in dispute on the plea that the plaintiff-respondent had purchased a plot underneath the suit house vide sale deed dated 14.8.1970 and thereafter constructed the existing house thereon from his own resources and as such he was owner of the same. The defendant-

appellant being the son of the plaintiff was allowed to live in the said house on the express condition that the defendant shall pay Rs.500/- per month to his mother regularly beside participating in all family matters and shall give half of the expenditure to his brother Santokh Singh. It is also mentioned in the writing that in case the defendant failed to fulfill the above condition then the said writing shall be deemed to be cancelled as revoked and shall be of no significance at all.

The case of the plaintiff-respondent was that as the defendant failed to abide by the terms and conditions of the writing and started misbehaving with the plaintiff he was disinherited by the plaintiff vide deed of disclaimer dated 6.11.1995. The case of the plaintiff-respondent was that the defendant had no right to live in the said house and therefore, possession was sought. The suit was contested by the defendant-appellant and it was asserted that the defendant had not failed to comply with the conditions and he was regularly paying Rs.500/- per month to his mother and was further incurring whole expenses with regard to the family obligation. The deed of disclaimer dated 6.11.1995 was stated to be unlawful and ineffective. It was the case of the defendant-appellant that the said deed was executed only to defame the defendant and to grab the said house which was given by the plaintiff to the defendant by family settlement dated 22.12.1993. It was the case of the defendant-appellant that the plaintiff relinquished his rights with regard to the said house vide agreement dated 22.12.1993 as such the plaintiff had no interest in the said property. It was further claimed that the second house was given to second son of the plaintiff namely Santokh Singh vide agreement dated 10.12.1993 which was duly registered in the register of Petition Writer.

Both the courts below on appreciation of evidence came to the conclusion that the defendant had failed to prove his ownership on the basis of family settlement and further that the appellant was debarred and disowned by the plaintiff-respondent from succeeding to plaintiff's property vide Aaknama Ex.P.1. The concurrent finding of the courts below that after execution of Aaknama Ex.P.1 the possession of the defendant-appellant over the house was that of trespasser and he had no right or title to remain in possession of the suit house. It was also held that the plaintiff-respondent being the owner has got every right to take possession of the suit house from the defendant. Accordingly, the suit was decreed and the appeal was also dismissed by the learned additional District Judge.

The other case was filed by the appellant seeking injunction against the respondent from interfering in the possession on the basis of agreement dated 22.12.1993. The said suit was dismissed and the appeal against the said order met with the same fate.

Learned courts below came to the conclusion that by way of agreement alleged to be family settlement dated 22.12.1993 no title was passed to the appellant.

Learned counsel for the appellant placed reliance on the judgment of this Court in the case **Ramji Dass etc. Vs. Dhanti Ram etc. 1979 Current Law Journal (Civil)229** to contend that once a close relation entered into family settlement it was not open to either of the parties to back out of it. Reliance was placed on para No.7 of the judgment which reads as under:-

> “7. It appears that the defendant-appellants had filed a petition before the Panchayat asserting their claim with

regard to the property left by Milkhi Ram and Hansu who had died issueless. The plaintiff-respondents filed a written statement Exhibit D.4 on January 22, 1958. In that written statement they had admitted the claim of the defendant-appellants and the aforementioned compromise was arrived at in those proceedings. In short, there was a claim made by one party which was admitted by the other party not only in the written statement but the admission was reiterated in the form of a compromise before the Panchayat also. A look at D.5 would show that on April 19, 1963 all the four heirs of the aforementioned Hansu and Milkhi Ram, including the present appellants, jointly mortgaged their share of the property in favour of one Sarwan Singh. Vide Exhibit D.6 they mortgaged a part of the property on April 9, 1963, in favour of one Arjan Singh. Vide Exhibit D.7 the present appellants got their share redeemed on July 23, 1963, with the tacit consent of Dhantu Ram one of the respondents. The aforementioned documentary evidence produced on record clearly establishes that the parties were closely related to each other, that they had some dispute about the inheritance to the property left by Hansu and Milkhi Ram and that they resolved this dispute by making some readjustments in the property which had earlier fallen to the share of each branch. The compromise arrived at before the Panchayat on March 19, 1959 (Exhibit D.3) extracted above shows that after the readjustment of the shares the parties were left with no

dispute whatsoever. It is thus apparent that the close relations had entered into a family arrangement and once they had done so it is not open to either of the parties to back out of it. The position of law has been made abundantly clear by a comparatively recent judgment of their Lordships of the Supreme Court in *Kale and others V. Deputy Director of consolidation and others,* Air 1976 S.C. 807, in which it was observed as under:-

> ".....the principle that there is no estoppel against the statue does not apply to the present case. Assuming however,that the said document was compulsorily registrable the Courts have generally held that the family arrangement being binding on the parties to it would operate as an estoppel by preventing the parties after having taken advantage under the arrangement to resile from the same or try to revoke it. This principle has been established by several decisions of this Court as also of the Privy Council. In *Kanhai Lal Vs. Brij Lal,* AIR 1918 P.C.70, the Privy Council applied the principle of estoppel to the facts of the case and observed as follows."

Reading of the above judgment shows that it has no application on the facts of the present case as admittedly by way of agreement dated 22.12.1993 the title of the property was not passed on to the appellant. It was clearly mentioned that the appellant could become the owner after the death of the respondent herein. Therefore, it could not be said to be a family settlement which was binding between the parties. Learned courts below

have rightly come rightly come to the conclusion that the agreement dated 22.12.1993 did not transfer the title to the appellant and further after revocation of the same the appellant was left with no right or title in the property. The concurrent findings of fact of the learned courts below on appreciation of evidence cannot be interfered with in Regular Second appeal as there is no question of law involved in the present appeal much less a substantial question of law.

Accordingly, finding no merit both the appeals are dismissed.

(Vinod K.Sharma)
Judge

21.09.2006
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